2001 303(d) List

Alamo River	723.10	52 miles	Basin Plan Objectives violated, recreational impacts	Silt	Imperial Valley Agricultural return flows	High	Started 1998, completed 2001
			Elevated fish tissue levels, toxic bioassay results	Pesticides[4]	Imperial Valley Agricultural return flows	High	Start 2005, complete 2011
			Elevated fish tissue levels	Selenium[3]	Imperial Valley Agricultural return flows	High	Start 2005, complete 2010
Imperial Valley Drains	723.10	1,305 miles	Basin Plan Objectives violated, recreational impacts	Silt	Imperial Valley Agricultural return flows	High	Start 2001, complete 2004
			Elevated fish tissue levels, toxic bioassay results	Pesticides[4]	Imperial Valley Agricultural return flows	High	Start 2005, complete 2011
			Elevated fish tissue levels	Selenium[3]	Imperial Valley Agricultural return flows	High	Start 2003, complete 2010
Salton Sea	728.00	220,000 acres	Basin Plan Objectives violated, recreational impacts	Nutrients	Agricultural return flows, NPDES Wastewater Plants, Mexico	High	Start 2001 complete 2004
			Basin Plan Objectives violated	Salts[5]	Agricultural return flows, NPDES Wastewater Plants, Mexico	High	
			Elevated fish tissue levels	Selenium[3]	Agricultural return flows	Medium	Start 2005, complete 2010

Palo Verde Outfall Drain	715.40	16 miles	Basin Plan Objectives violated, public health hazard	Pathogens	Unknown	Medium	Start 2001, complete 2003
Coachella Valley Storm water Channel	719.47	20 miles	Basin Plan Objectives violated, thread of toxic bioassay results	Pathogens	Unknown	Low	Start 2002, complete 2005

1- This is not a commitment to complete work. The commitments are made in fund source specific workplans.
2- Current Regional Board's monitoring data for the New River at the International Boundary shows that VOCs are routinely present in the New River immediately downstream from the International Boundary with Mexico, at concentrations that violate Basin Plan objectives. However, data collected by USBOR near the New River-Salton Sea Delta in 1999 and briefly presented at the January 13-14, 2000 Salton Sea Symposium found that VOCs in the New River not to be of major concern. Therefore, it is believed that the VOC impairment may not affect the 60-mile stretch of the New River in the USA. Additional data is necessary to characterize the impacted river segment.
3- Selenium originates from upper portion of the Colorado River and is delivered to the Imperial Valley via irrigation water; Selenium will likely be addressed via a federal TMDL for the entire Colorado River Watershed.
4- May be effectively addressed by Silt TMDL, thus not requiring new TMDL development.
5- TMDL development will not be effective in addressing this problem, which will require an engineered solution with federal, state, and local cooperation.

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Continue

Winston H. Hickox
Secretary for
Environmental
Protection

State Water Resources Control Board

Office of Chief Counsel
901 P Street - Sacramento, California 95814 • (916) 657-2154
Mailing Address: P.O. Box 100 Sacramento, California 95812-0100
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Gray Davis
Governor

Response to Comment S5-83

Comment noted.

July 11, 2000

CERTIFIED MAIL

Mr. William E. Hvidsten
De Cuir & Somach
400 Capitol Mall, Suite 1900
Sacramento, CA 958 14-4407

Dear Mr. Hvidsten:

S5-83

REQUEST FOR REDESIGNATION OF BENEFICIAL USES FOR IMPERIAL VALLEY WATERS

Mr. Phil Gruenberg has requested I respond on his behalf to your letter dated May 20, 2000. Your letter, submitted on behalf of the Imperial Irrigation District (IID), requests that the Colorado River Basin Regional Water Quality Control Board (Regional Board) "redesignate" and "re-define" beneficial uses for the New and Alamo Rivers without performing a use attainability analysis. In its request, the IID objects to the definition of recreational (REC-1 and REC-2), freshwater replenishment (FRSH), and warm freshwater habitat (WARM) beneficial uses for the New River, Alamo River, and Imperial Valley drains contained in the *California Regional Water Quality Control Plan for the Colorado River Basin Region* (Basin Plan).

The Basin Plan designates the beneficial uses for all the waters of the region (surface and ground waters) and establishes the water quality objectives to protect those uses. The Regional Board adopted its Basin Plan pursuant to the water quality planning provisions of the California Water Code section 13240, et seq. The Basin Plans and Basin Plan revisions thereof are then subject to the approval of the State Water Resources Control Board (State Board) Water Code section 13245. The Imperial Valley drains and the Alamo and New Rivers are surface waters of the United States, in part, because their waters are used for interstate and foreign commerce and because they are tributary to navigable waters (40 C.F.R. § 110, et seq.). The Federal Water Pollution Control Act (a.k.a. the Clean Water Act; U.S.C. § 1251, et seq.) and Title 40 of the Code of Federal Regulations contain the legal and regulatory criteria regarding water quality standards for surface waters of the United States (40 C.F.R., Part 13 1, et seq.). Because the Basin Plan establishes water quality standards for surface waters pursuant to federal law, changes in those standards are also ultimately subject to the review and approval of the United States Environmental Protection Agency (USEPA).

The Regional Board recognizes recreational, freshwater replenishment, and warm freshwater habitat as actual uses which are likely to continue in the New River, Alamo River and Imperial Valley drains. These designated uses for the New River, Alamo River, and Imperial Valley drains are contained in the Basin Plan as existing uses. Existing uses, defined by Title 40 of the United States Code of Federal Regulations (40 C.F.R.), Subchapter D, Part 13 1.3(e), are those uses actually attained in a water body on or after November 28, 1975, whether or not they are included in the water quality standards. 40 CFR requires that existing uses be designated. Unless a more stringent use is established in lieu of the designated use, 40 CFR prohibits the removal of or dedesignation of an existing use.

In addition, Title 40 authorizes dedesignation and partial dedesignation of a use only if the use is a potential use and the state demonstrates that attaining the use is not feasible for one of the reasons contained in 40 CFR § 13 1.1 O(g). If a potential use, however, will be attained by the implementation of technology based effluent limits for point sources of pollution and implementation of BMPs to control non point sources of pollution, the use may not be removed (40 C.F.R., Part 131.10(d)). Even if the beneficial uses you discuss were potential uses and not existing uses, consideration of dedesignation is premature and would require a use attainability analysis.

At this time, the implementation of cost-effective and reasonable best management practices (BMPs) for nonpoint source control have not been implemented for the New River, Alamo River or Imperial Valley agricultural drains to achieve and protect the beneficial uses of these waters. As IID is aware, the Regional Board is currently preparing a Total Daily Maximum Daily Load (TMDL) and implementation program for the Alamo River. The program will propose many BMPs for silt in the Alamo River and the agricultural drains that are tributary to the Alamo. TMDL and implentation programs will be prepared in the future for other impaired water bodies in the region including the New River. After the implementation of limits and controls, if a potential use cannot be attained, the federal regulations provide for beneficial use modification. However, the state must demonstrate infeasibility and a Use Attainability Analysis is required prior to modification of any instream uses (e.g. recreational uses and habitat) (40 C.F.R., Part 131.10(j)).

IID argues in its request that no use attainability analysis is required. IID argues that it simply requests that the Board "redefine" or "redesignate" the definition of the beneficial uses. Although IID chooses not to use the terms "removing a beneficial use", the practical result of IID's request would be to limit or remove part of the existing beneficial uses. Removal or dedesignation of an existing use is clearly prohibited.

The Regional Board hopes that IID will continue to work with the Regional Board to address the severe impairments for the New River, Alamo River and Imperial Valley drains via the Total Maximum Load Process-a process that provides for the development of appropriate targets and pollutant load allocations for those waters.

65-83

If you have any questions about this matter, please call me at (916) 657-2088.

Sincerely,

Karen A. O'Haire

Karen A. O'Haire
Senior Staff Counsel

cc: Colorado River Basin RWQCB Members
Mr. Phil Gruenberg, CRBRWQCB
Mr. Jose Angel, CRBRWQCB
Mr. Stan Martinson, DWQ, SWRCB, Sacramento
Ms. Felicia Marcus, USEPA, Region IX, San Francisco
Ms. Alexis Strauss, USEPA, Region IX, San Francisco
Mr. Terry Oda, USEPA, Region IX, San Francisco
Ms. Eugenia McNaugthon, USEPA, Region IX, San Francisco
Mr. Jesse Silva, IID, Imperial
Mr. Brad Luckey, IID, Imperial

bc: Sheila Vassey, OCC
John Matox, OCC

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S5-84

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
COLORADO RIVER BASIN REGION

RESOLUTION NO. 01-205

A RESOLUTION APPROVING THE 2001 303(D) LIST OF IMPAIRED WATER BODIES
FOR THE
COLORADO RIVER BASIN REGION

WHEREAS, the California Regional Water Quality Control Board, Colorado River Basin Region (hereinafter Regional Board), finds that:

1. Section 303(d) of the Clean Water Act requires each state to develop a 303(d) List, which identifies and prioritizes water bodies that do not attain water quality standards after implementation of point source best available technology (BAT) controls and best management practices (BMPs).

2. The 303(d) List is reviewed and updated by the Regional Board as necessary (typically every three years), subject to the approval of the State Board and the United States Environmental Protection Agency (USEPA).

3. On January 8, 1998, the Colorado River Basin Regional Board approved the 303(d) List. The 1998 303(d) List was also approved by the Stat Board and the USEPA the same year.

4. On February 28, 2001, Regional Board staff solicited information from the public for updating its 303(d) List.

5. On August 16, 2001, Regional Board staff distributed the draft updated 303(d) List by mail to interested parties.

6. On August 20, 2001, Regional Board staff mailed a Notice of Public Hearing to be published in six local newspapers.

7. On August 21, 2001, Regional Board staff requested the Postmaster to post the Notice of Public Hearing in six post offices of interested cities and communities.

8. Regional Board staff has reviewed data and comments from affected stakeholders, data collected by staff and other agencies, and applicable water quality standards in developing a proposed updated 303(d) List.

9. The 2001 303(d) List of impaired water bodies for the Colorado River Basin Region contains the same six water bodies previously listed in the 1998 303(d) List with some changes, so that the updated list:

   a. Identifies specific volatile organic compounds (VOCs) as impairing the New River. The VOCs are attributable to discharges of wastes from Mexico;

   b. Removes the pollutant "nutrients" as impairing the New River;

   c. Adds trash from Mexico as a pollutant impairing the New River;

Response to Comment S5-84

Comment noted.

d. Adds dissolved organic matter as another pollutant impairing the New River, with dissolved oxygen being the stressor indicator parameter.

e. Changes "bacteria" to "pathogens" as a pollutant impairing the Palo Verde Outfall Drain, the New River, and the Coachella Valley Stormwater Channel; and

f. Modifies the time schedule for TMDL development.

10. A public hearing was conducted on October 10, 2001 for the purpose of approving the updated 2001 303(d) List.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Regional Board herewith approves the updated 2001 303(d) List for the Colorado River Basin Region as shown in Attachment "Three" of the "Staff Report on the Proposed Update of Clean Water Act 303(d) List of Impaired Water Bodies Within the Colorado River Basin Region", and as required by the Federal Clean Water Act.

2. The Executive Officer is directed to forward copies of the approved 2001 303(d) List for the Colorado River Basin Region, its supporting documentation, and this Resolution to the State Board.

I, Phil Gruenberg, Executive Officer, do hereby certify that the foregoing is a full, true, and correct copy of a resolution adopted by the California Regional Water Quality Control Board, Colorado River Basin Region, on October 10, 2001.

65-84

PHIL GRUENBERG
Executive Officer

State of California - The Resources Agency
GRAY DAVIS, *Governor*

DEPARTMENT OF FISH AND GAME
http://www.dfg.ca.gov

Eastern Sierra-Inland Deserts Region
330 Golden Shore, Suite 210
Long Beach, California 90802

April 26, 2002

Mr. Elston Grubaugh
Manager of Resources, Management, and Planning Department
Imperial Irrigation District
P.O. Box 937
Imperial, CA 92251

Dear Mr. Grubaugh:

Comments on the
Draft Environmental Impact Report/Environmental Impact Statement
Imperial Irrigation District Conservation and Transfer Project and
Draft Habitat Conservation Plan SCH # 99091142

S6-1 The California Department of Fish and Game (Department) has reviewed the Draft Environmental Impact Report/Environmental Impact Statement (Draft EIR/EIS) for the Imperial Irrigation District Conservation and Transfer Project and Draft Habitat Conservation Plan (Proposed Project) and is providing comments on fish and wildlife resources that may be affected by the Proposed Project. The Imperial Irrigation District (IID) is proposing to conserve and transfer up to 300,000 acre-feet per year (KAFY) of Colorado River water. The conserved water would be transferred by IID to San Diego County Water Authority (SDCWA), Coachella Valley Water District (CVWD), and/or Metropolitan Water District (MWD). These transfers will remain in effect for 75 years. Water conservation will be achieved through a combination of on-farm system improvements, improvements by IID to its water delivery system, and/or fallowing. Water delivery will occur through existing water conveyance systems, although the point of diversion from the Colorado River will change. The Proposed Project also includes implementation of a Habitat Conservation Plan (HCP) to address impacts to covered species and habitats within the IID water service area, the right-of-way of the All American Canal (AAC), and the Salton Sea. The Department encourages IID to continue to investigate various fallowing options in conjunction with other mitigation measures, which have already been discussed.

S6-2 The Department is reviewing this document as a Trustee Agency and as a Responsible Agency with jurisdiction over the conservation, protection and management of fish, wildlife, native plants, and habitat necessary for biologically

Letter - S6. Department of Fish and Game. Signatory - Curt Taucher.

Response to Comment S6-1

Comment noted.

Response to Comment S6-2

Comment noted.

sustainable populations of those species. In those capacities, the Department will provide comments on the following issues:

- Biological Resources – Impacts to fish at the Salton Sea;
- Effects to Species along the Lower Colorado River (LCR) from increased salinity and selenium;
- Mitigation in the Draft EIR/EIS is inadequate to mitigate impacts to listed species and Species of Special Concern to a level of less than significant;
- The Department believes there will be significant, yet mitigable impacts to the Salton Sea sportfishery

S6-2 The Department provides the following specific comments on the Draft EIR/EIS for the Proposed Project:

S6-3 2.2 Proposed Project
California Environmental Quality Act (CEQA) Guidelines, Section 15378, defines "Project" to mean the whole of the action that may result in either a direct or reasonably foreseeable indirect change in the environment. In considering whether an activity is a "project", an agency must look at all of the parts, components, and phases of the activity. The Department recommends that the project description include the conservation of water in the IID Service Area, the diversion of IID's conserved water, and the subsequent delivery to MWD, CVWD, and SDCWA Service Area as components of the Proposed Project. As drafted, it is unclear whether those components are intended to be included as part of the overall transfer.

S6-4 2.2.6.5 Duration of the HCP
There is no statute which allows the Department to provide assurances that no additional mitigation will be required in the event an unlisted species covered by an incidental take permit becomes listed.

S6-5 2.3.2.1 Alternative 1: No Project
The Department suggests adding two bullets to the list titled "Conditions Affecting the LCR, IID Water Service Area, and Salton Sea":

- Detrimental effects will occur to State- and federally-listed and non-listed species, including species of special concern (e.g. desert pupfish, black skimmers, white pelicans, and brown pelicans).

- Biological conditions at the Salton Sea will change, such that key invertebrates and fish that maintain a sportfishery and provide forage for piscivorous and non-piscivorous birds will be eliminated.

Response to Comment S6-3

The components of the Proposed Project do include the conservation of water in the IID water service area, the diversion of IID's conserved water, and the subsequent delivery of the conserved water to SDCWA, MWD, and/or CVWD. These components are clearly listed in Section 2.2 of the Draft EIR/EIS.

Response to Comment S6-4

The sentence in question has been removed from the text of Section 2.2.6.5 in the Draft EIR/EIS. This change is indicated in this Final EIR/EIS in Section 2.2.6.5.

Response to Comment S6-5

The Draft EIR/EIS has been revised according to the suggestion in the comment. This change is indicated in this Final EIR/EIS in Section 2.3.2.1.

S6-6

3.0 Development of the Baseline
The Department recommends that the Draft EIR/EIS clarify its discussion regarding the distinction between the existing environmental setting and what is likely to occur under the "no-project" alternative.

S6-7

3.2 Biological Resources
Table 3.2-1, BR-45
The Department disagrees that the impact would be less than significant from the effect of increased salinity reducing fish resources in the Salton Sea. Fish resources in the Salton Sea provide a forage base for piscivorous birds and a high quality sportfishery. Increased salinity from the Proposed Project and alternatives 2, 3, and 4 will hasten the loss of these fish resources by five to nineteen years. The mechanism for reducing the impact to less than significant that is feasible for these alternatives requires a hatchery for orangemouth corvina. The Department recommends the table be changed to reflect these comments.

S6-8

3.2.3.1 Lower Colorado River
The Department requests a more thorough discussion and analysis of the extent (delineated acreage, spatial and temporal use and distribution) of currently utilized habitats (breeding, foraging, migratory, etc.) for each of the Special Status Species listed in Table 3.2-5. The Department has additional documented reports and records of all Special Status Species and will provide them to assist in the more detailed discussion and analysis. Furthermore, the Department requests that species information in the Lower Colorado River Draft Multi-Species Conservation Plan (LCR MSCP) be utilized to facilitate this analysis.

The change in points of diversion (less water traveling between Parker and Imperial Dams) will cause a drop in ground water levels. It is unclear from the Draft EIR/DEIS how this drop in ground water will affect the quality and extent of currently utilized riparian and wetland habitats, defined by plant species composition and vegetation structure, for the Special Status Species listed in Table 3.2-5. The Department recommends the document address habitat modification resulting from drops in ground water elevations, specifically as it relates to micro-site habitat modification and effects to habitat suitability and availability for each of the Special Status Species listed on Table 3.2-5.

S6-9

3.2.3.2 IID Water Service Area, AAC and Salton Sea Drainage System
The Department asks for clarification as to whether biological controls are a currently used method for controlling vegetation in drains. If they are currently used or anticipated for future use and IID wants this type of activity covered in a California Endangered Species Act (CESA) permit issued by the Department, then it needs to be discussed further in this document. No other references to this type of activity can be found in the document.

Response to Comment S6-6

Please refer to the Master Response on *Hydrology—Development of the Baseline* in Section 9 of this Final EIR/EIS.

Response to Comment S6-7

Please refer to the Master Response on *Biology—Impact Determination for Fish in the Salton Sea and Recreation—Mitigation for Salton Sea Sport Fishery* in Section 9 of this Final EIR/EIS.

Response to Comment S6-8

Habitat and species utilization are described in Section 3.2.3.1 of the Draft EIR/EIS. It is not necessary for the impact analysis to further delineate the acreage, spatial and temporal use and distribution of currently utilized habitats for each of the Special Status Species listed on Table 3.2-5. Additional discussion is provided below as requested, however. This information is provided as clarification only and does not change the conclusions of the impact analysis, which indicates that impacts to such species are potentially significant. Mitigation measures were included in the Draft EIR/EIS to reduce this potentially significant impact to less than significant. The information provided below demonstrates how the mitigation proposed addresses several different species.

Arizona Bell's vireo - Along the Lower Colorado River, this subspecies is closely associated with early-successional cottonwood-willow habitat. The MSCP (SAIC 2001) identifies the creation and enhancement of healthy riparian stands of cottonwood-willow habitat as a management priority for this species. This is also the goal of the mitigation measures identified in the Draft EIR/EIS.

California black rail - Key habitat components for this species include shallow water, with a preference for saturated versus inundated soil conditions, and high stem density (Rosenberg et al. 1991, Flores and Eddleman 1995 in MSCP 2001). Consideration of these habitat variables can be incorporated into the design of the proposed mitigation of creating backwater/marsh habitat, thus benefiting this species. The MSCP (SAIC 2001) identifies the enhancement of existing rail habitat and the creation of new shallow-water wetlands as a management priority.

Elf owl - Elf owls are associated with woodland habitats in the arid southwest, including saguaro, cottonwood-willow, and arboreal mesquite habitats (Rosenberg et al. 1991). As with other listed bird species inhabiting riparian forests along the Lower Colorado River, protection, followed by enhancement of riparian habitat, is a management priority (SAIC 2001). This is the intent of the proposed mitigation measures.

Gila woodpecker - This species has fairly broad habitat uses with the common denominator of patches of woodland. For instance, they occupy mature riparian forests along the Lower Colorado River, saguaros, mesquite bosques, and orchards (Rosenberg et al. 1991). Patch size is apparently an important component for riparian nesting, with a minimum patch size of at least 20 ha (49 ac) (Rosenberg et al. 1991). The MSCP (SAIC 2001) identifies the preservation, restoration, and enhancement of riparian woodland as a management priority. This is also the goal of the proposed conservation measures.

Gilded flicker - This species occupies woodland, saguaro, and mesquite habitats, but is strongly associated with saguaros for nesting, although riparian trees with nesting cavities may be used (Rosenberg et al. 1991, Steinhart 1990). Because of the preference for nesting in saguaros, there are few gilded flickers in the riparian habitat along the Colorado River below Parker Dam except, perhaps, in the non-breeding season. As such, any improvement in riparian habitats from the proposed mitigation measures will have a marginal effect on this species.

Greater sandhill crane - While reproductive activities occur further north, this species winters in the Lower Colorado River Valley and elsewhere. They roost in wetlands and shallow marshes, especially sites adjacent to fields cultivated for grain. The largest wintering area in the Lower Colorado River Valley is Cibola National Wildlife Refuge. The MSCP (SAIC 2001) identifies the shortage of suitable roosting sites adjacent to foraging areas as a major threat to the species. Creation and preservation of suitable marsh habitat under the proposed mitigation measures may enable the species to expand into new areas.

Southwestern willow flycatcher - This species is a riparian obligate requiring a dense canopy and understory, with a midstory of variable density (Sogge and Marshall 2000). Vegetation patch size may be an important correlate of productivity and must be larger than approximately 10 yards wide (Sogge and Marshall 2000). Nest sites usually include or are near open water, cienegas, marshes or saturated soil in normal to wet years, although there may be a total absence of water or saturated soil in dry years (Sferra et al. 1997, Sogge and Marshall 2000). Dense vegetation and surface water may be important in both buffering against extreme air temperatures and reducing cowbird nest parasitism. The proposed mitigation measures to preserve and restore southwestern willow flycatcher habitat would be specifically tailored to attend to habitat requirements of the southwestern willow flycatcher.

Western yellow-billed cuckoo - This species requires broad habitat patches of mature cottonwoods with a subcanopy layer of willows (Rosenberg et al. 1991). Optimal stand size is >198 acres and at least 1,900 feet wide (Laymon and Halterman 1989 in SAIC 2001). The MSCP (SAIC 2001) identifies the protection and restoration of cottonwood-willow woodland as the primary management strategy for this species. The proposed mitigation measures to preserve and restore southwestern willow flycatcher habitat, a species with habitat requirements (e.g., broad patch size, similar plant species and density) that overlap with those of western yellow-billed cuckoo, would benefit the latter species as well.

Yuma clapper rail - Suitable habitat factors include uneven-aged stands of cattails and bulrushes, interspersed with open water of variable depths (Conway et al. 1993). For this relatively opportunistic species (Rosenberg et al. 1991), creation of suitable marsh habitat under the proposed mitigation measures may enable the species to occupy new sites.

Brown crested flycatcher - This species occurs in riverine areas containing willow and other riparian species. Implementation of the mitigation measures will compensate for any alteration of the habitat for the species.

Coopers hawk - Forages and nests throughout the Lower Colorado River area. Implementation of the Proposed Project would not directly impact the species. Potential impacts to riparian and marsh habitat may affect the species. Measures including restoration and nest platforms would mitigate potential impacts.

Crissal thrasher - Occurs in dense brush, including mesquite. The Proposed Project may affect this habitat, but mitigation is proposed that would mitigate this impact.

Fulvous whistling duck - Occurs in marsh areas along the Lower Colorado River. Wetlands affected by the change in river elevation would be replaced under the proposed mitigation measures, mitigating potential impacts to this species.

Harris hawk - forages throughout the Lower Colorado River in riparian and upland habitats. Any impacts to the habitat of the species would be mitigated by the measures included in the EIR/EIS.

Long-eared owl -occurs in willow habitat along the Lower Colorado River. Mitigation measures identified in the EIR/EIS would mitigate for any changes in the owl's habitat.

Summer tanager - occurs within dense willow riparian habitat. Mitigation measures identified in the EIR/EIS would mitigate for any changes in the tanager's habitat.

Vermillion flycatcher - Occurs in dense willow riparian habitat. Mitigation measures identified in the EIR/EIS would mitigate for any changes in the flycatcher's habitat.

Yellow warbler - occurs in dense riparian habitat. Mitigation measures identified in the EIR/EIS would mitigate for any change in habitat.

The second paragraph of the comment concerns the effects of a drop in groundwater levels. The analysis adequately investigates and discusses the potential significant impacts of the Proposed Project on the biological resources of the Colorado River (see Section 3.2.4.3 of the Draft EIR/EIS) using a habitat-based approach. Areas of potential impact were associated with the reduction of up to 400 KAFY of river flow between Parker and Imperial Dams. Habitat modification resulting from drops in groundwater elevations is addressed in the impact analysis (see Section 3.2.4.3). Mitigation measures are identified in the EIR/EIS that reduce any potentially significant impact to less than significant levels. The assessment of potential effects on biological resources covers a wide variety of habitat types and the species that rely on that habitat for feeding, cover, nesting, breeding, and rearing young. Federal and state special-status species are addressed using this habitat-based approach as well, under the premise that if the underlying habitat is protected or mitigated for sensitive species, potential impacts on more common species and general habitat conditions will be avoided and mitigated as well. Exhaustive evaluation of water surface elevation effects on every individual species encountered in the LCR subregion has therefore not been performed, and is not needed to reach meaningful conclusions regarding potential impacts. As one example of the manner in which micro-site habitat modification will be prevented, see the U.S. Fish and Wildlife Service's 2001 Biological Opinion (USFWS 2001), which describes the two-tiered conservation plan to minimize potential effects to willow flycatcher habitat that could result from reduced flows. As described in the Biological Opinion, the primary strategy of Tier One is to use management actions to prevent changes in the existing micro-habitat and prey base of occupied willow flycatcher habitat.

An analysis of potential effects on the Colorado River between Parker and Imperial Dams was prepared by Reclamation in 1999-2000, and was used as the basis for Reclamation's 2000 Biological Assessment (Reclamation 2000) and the USFWS's Biological Opinion (USFWS 2001). This analysis was based on a cumulative assessment approach using a speculative change in point of diversion volume of 1.574 MAFY taken from the ongoing Lower Colorado River MSCP process, and scaled to attribute effects to the 400 KAFY proposed IID transfer and QSA actions.*

Based upon these assumptions, the analyses determined that the river flow reductions would produce *median* water surface elevation reductions ranging from a *maximum* of up to .4 foot near Parker Dam, to less than one-quarter inch downstream at Imperial Dam, over a period of 10 years or more, with equivalent groundwater changes in adjoining backwaters and sloughs. These levels of *monthly median* water surface elevation change are less than the variations that occur now in response to weather, and variable water releases to meet annually and seasonally variable irrigation water demands.

The assumptions used in the analysis of potential impacts to habitats thus was very conservative and represents a worst-case analysis. This is especially true when addressing the potential effects associated with the decline of groundwater on riparian habitat. The analysis of impacts assumed a one-to-one ratio of the decline in river level to groundwater level, which is very conservative since there would likely be less change in groundwater level. Additionally, the riparian area that was impacted was probably overestimated since each area examined was assumed to be suitable habitat, and it probably was not.

- Although the IID Transfer and QSA volume of 400 KAFY is well understood, the source of the 1.574 MAFY figure (a figure which implies significant precision for all possible future transfer volumes) is not defined in the BA, except as attributed to general estimates made by the three Lower Division States (Arizona, California, and Nevada) when queried regarding all possible actions that may reduce river flows that could be taken over the next fifty years (the list of actions is briefly described on page 39 of the BA, and actions are listed without quantification on pages 40 and 41). In contrast to the precision implied, the 1.574 MAFY value is a very conservative estimate and includes a number of highly speculative projects.

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S6-10

3.2.4.1 Methodology
Wildlife and Wildlife Habitat
The Department requests that the document discuss and analyze the impacts to and mitigation proposed for the Proposed Project's effects on: 1) Nelson's bighorn sheep as related to quantity and quality of their drinking water; 2) desert mule deer and Nelson's bighorn sheep access to the LCR and associated backwaters from possible expansion of tamarisk; and 3) the effects of reduced surface and ground water on migratory waterfowl, wading birds, and shore birds that use the LCR and associated backwaters.

S6-11

Please correct Table 3.2-34 to reflect the status of razorback sucker in California as both endangered and fully protected.

S6-12

3.2.4.3 Proposed Project
Lower Colorado River
The document states that this project will result in a 4-5 inch reduction in median water level along the LCR. No mention is made of the currently degraded ground water conditions such as reduced ground water elevations and increased concentration of Total Dissolved Solids. The Department recommends the document include an analysis of the Proposed Project's impact on this ground water system and the vegetation communities listed in Table 3.2-2 and Table 3.2-4. This analysis also needs to include the potential for these changes to favor exotic plant species, such as tamarisk, and the change in the rate of succession and loss of wetland habitat to upland terrestrial habitat within these areas and subsequent impacts to species listed in Table 3.2-34.

The Department recommends the document analyze impacts to water flow conditions on the LCR resulting from this project, using the Bureau of Reclamation's (USBR) 2000 Colorado River Simulation System (CRSS) model and not the USBR 1991 CRSS model. This will provide consistency with the U.S. Fish & Wildlife Service (USFWS) 2001 Biological Opinion (2-21-00-F-273) on this project's impact.

S6-13

When the Department issues an incidental take permit, as a responsible agency, the Department reviews the lead agency's CEQA document prior to determining whether impacts to listed species have been reduced to a level less than significant and whether impacts of the taking have been minimized and fully mitigated. The Department, therefore, recommends that all measures to avoid, minimize, and mitigate impacts to State-listed species along the LCR be included in the document for the Proposed Project.

Response to Comment S6-9

Biological controls are not used to control vegetation in the drains. The previous Draft EIR/EIS has been revised to reflect this concern. This change is indicated in this Final EIR/EIS in Section 3.2.3.2.

Response to Comment S6-10

No impact to the Nelson's bighorn sheep's or desert mule deers' supply of drinking water is anticipated. River access for these species is not expected to become more restricted due to the small reduction in water surface. Saltcedar (tamarisk) encroachment has been occurring on the LCR for decades due to reasons other than water surface levels. To date there have been no observations that this encroachment on the floodplain has restricted river access for these species to any harmful degree.

Impacts of reduced surface and ground water on migratory waterfowl, wading birds, and shore birds that use the LCR would be hard to quantify, at best. Bear in mind the reduction in surface area is only a fraction of that existing without the project, and impacts are expected to be less than significant.

Response to Comment S6-11

The Draft EIR/EIS has been revised to reflect this concern.
Table 3.2-34 has been changed to indicate the razorback sucker's status as both endangered and fully protected. This change is indicated in this Final EIR/EIS in Section 3.2.4.1.

Response to Comment S6-12

Regarding additional analysis of the Proposed Project's impact on the groundwater system and vegetation community, the following information is provided. Any reduction in groundwater levels is anticipated to be small and would primarily occur near the edge of the river. An analysis of the impact on the groundwater system and the vegetation communities is provided in the EIR/EIS (see Impacts BR-1 through BR-9, starting on page 3.2-107 of the Draft EIR/EIS).

Response to Comment S6-12 (continued)

Regarding the potential for these changes to favor exotic plant species, the change in succession, and loss of wetland habitat, the effects of concern to the commenter will be avoided with the Project mitigation. Subsequent impacts to species listed in Table 3.2-34 of the Draft EIR/EIS will be mitigated to below a level of significance. Further documentation of the manner in which the mitigation measures also address other species is provided in the response to Comment S6-8 of the Final EIR/EIS.

Regarding the commenter's recommendation that the document analyze impacts to water flow conditions using the USBR 2000 model and not the 1991 model, the following information is provided. There is not an inconsistency between the Project impacts and the Biological Opinion. As explained on page 3.2-104 of the Draft EIR/EIS, the 2000 model result is consistent with the 1991 analyses. The 2000 analysis focused on cumulative effects of the 400 KAF as a part of the total 1.574 MAF considered under the LCR MSCP. The 1991 analysis was used in the EIR/EIS because: (1) the results of the 1991 and 2000 analyses were consistent, and (2) the 480 KAF reduction analyzed in the 1991 analysis was more representative of the Project-specific impacts addressed in the EIR/EIS. In addition, the Project's contribution to a potentially significant cumulative impact is acknowledged (see page 3.2-105 of the Draft EIR/EIS.)

Response to Comment S6-13

The mitigation measures adopted in the Biological Opinion are sufficient to minimize and mitigate the effects on species. All appropriate measures have been included in the document for the Proposed Project.

S6-14 The Department believes that effects to listed species resulting from increases in salinity and selenium are not adequately addressed in the document. Therefore, it is requested the document provide more analysis of the impacts of decreased water volumes, flushing rates, and flushing volumes on salinity and selenium in the LCR and associated backwaters.

S6-15 Impact BR-8. Reduced Acreage of Aquatic Habitat Could Affect Special Status Fish Species
Please change this discussion to reflect that bonytail chub are present in Lake Havasu and razorback suckers are present below Parker Dam, within the Parker Strip section. Sonic tagging studies have shown that razorback suckers are also present in Senator Wash Reservoir and the Imperial, Cibola, and Palo Verde Divisions of the LCR Region.

The Department has the following suggested language for the last paragraph of Impact BR-8 (first paragraph on Page 3.2-113): "The current designation of the razorback sucker by the State of California as fully protected does not allow for their take, other than for necessary scientific research. At present, there is proposed State legislation that would allow for take of this and other fully protected species associated with this project. If this legislation passes, then appropriate mitigation for impacts to these species will be developed before a Notice of Determination (NOD) is issued for this project. Should legislation be unsuccessful in allowing for take of these species, then measures will be incorporated into the document to avoid take of fully protected species."

The Department does not concur that the measures offered and referenced in the document (BR-1 through BR-9) mitigate to a level of less than significant the impacts that will occur from this Proposed Project to all of the California threatened, endangered, and Species of Special Concern listed in Table 3.2-5 [Special Status Species Potentially Along the LCR]. However, the Department is committed to working closely with the participating agencies to develop and identify acceptable conservation measures that meet the criteria for both CEQA and CESA.

S6-16 IID Water Service Area and AAC
In this section, several impacts to biological resources are found to have "less than significant" impacts. The Department believes that the wording of "less than significant impact" for several of the impacts needs to be qualified with language similar to that used for other impacts to biological resources in this subsection that will be mitigated for in the HCP. Therefore, it is recommended that the wording, "However, implementation of the HCP component of the Proposed Project would reduce this potential impact to a

Response to Comment S6-14

Little information is available for such an analysis on a system-wide scale. While selenium has been identified as a possible contaminant, the source of that selenium is apparently from seleniferous shales in the upper Colorado River Basin. The analysis given used the best available knowledge.

Response to Comment S6-15

The sentence stating "Bonytail chub does not inhabit the mainstream below Parker Dam but likely will be introduced" has been removed from the text. Regarding the razorback sucker, the comment provides additional information that does not change the EIR/EIS conclusions.

Regarding the suggested language for the last paragraph of Impact BR-8, the following response is provided: IID agrees with the first two suggested sentences to be added. Regarding the third sentence, no additional mitigation is required if the legislation passes; adequate mitigation has been developed and is reflected in the HCP (Appendix C of this Final EIR/EIS). Regarding the fourth sentence, if the legislation is not passed, take of fully protected species will be avoided.

The last paragraph of the comment addresses mitigation. - Comment noted.

Response to Comment S6-16

Based on the significance criteria, the impacts noted in the comment were determined to be less-than-significant without implementation of the HCP. Therefore, the suggested text revisions are not appropriate. Implementation of the HCP would further reduce effects of the water conservation and transfer component of the Proposed Project and often would result in a net benefit.

S6-16 less than significant level", be placed in front of the above-referenced wording for Impact BRs - 10, 14, 15, 16, 17, 18, 19, 21, 28, 29, 42 and 48.

S6-17 Impact BR-45 states that "Because all fish species are introduced, non-native species, the impacts are less than significant". The Department disagrees with this statement for the following reasons. Department of Fish and Game-published reports document that the sportfish of the Salton Sea make up one of California's highest-quality sportfisheries (Black 1974; Black 1985). This self-sustaining fishery has been utilized by anglers, 75% of whom come from outside of Imperial and Riverside counties, for 50 years. The Department believes that shortening the life span of the existing sportfishery at the Salton Sea by as much as 19 years, due to the transfer of conserved water out of the Salton Sea Basin, is a significant impact that must be addressed in this document. Therefore, the Department requests that the above-referenced section be modified to read that "unless mitigated, significant impacts to the sportfishery of the Salton Sea will occur from this project". The comments provided above also pertain to Impact A2-BR-28, Impact A3- BR-35 and to Impact A4-BR-17 in the document. The document needs to be changed to reflect these comments.

S6-18 3.6 Recreation
Table 3.6-1 Summary of Recreation Impacts
Salton Sea
Impact R-8 states that there will be significant unavoidable impacts from reduced sportfishing opportunities. The Department believes that the exacerbated loss of the Salton Sea sportfishery that will result from this project will be a significant, yet mitigable impact. This table and other pertinent sections of the Draft EIR/DEIS should be modified to indicate this language, which would then accurately reflect the on-going discussions between the participating agencies and the Department regarding mitigation strategies for the exacerbated loss of the Salton Sea sportfishery.

S6-19 3.6.3.3 Salton Sea
There is no mention in this section of the importance of the Salton Sea sportfishery. Department of Fish and Game-published reports document that the sportfish of the Salton Sea make up one of California's highest quality sportfisheries (Black 1974; Black 1985). This self-sustaining fishery has been utilized by anglers, 75% of whom come from outside of Imperial and Riverside counties, for approximately 50 years. The Department recommends that this subsection of the document recognize the value of this fishery to the local and regional area.

Response to Comment S6-17

With respect to impacts to biological resources, see the Master Response for *Biology—Impact Determination for Fish in the Salton Sea* in Section 9. The effects of changes in sport fish populations on recreational opportunities are addressed in the Master Response *Recreation Mitigation for Salton Sea Sport Fishery*.

Response to Comment S6-18

See the Master Response on *Biology—Approach to the Salton Sea Conservation Strategy* in Section 9 of this Final EIR/EIS. With implementation of this approach, impacts to the Salton Sea fishery and sport fishing will be avoided.

Response to Comment S6-19

Comment noted. Subsection 3.6.3.3 of the Draft EIR/EIS has been revised to include language describing the importance of the Salton Sea fishery (see Section 3.6.3.3).

S6-20

3.6.4.1 Methodology

A report on the economic importance of the Salton Sea sportfishery (CIC Research, Inc.1989), estimated that in 1987 there were approximately 2.6 million recreation days spent at the Salton Sea, of which slightly more than 1 million were people fishing. The second paragraph on Page 3.6-11 does not acknowledge this report and instead references an Administrative Draft Program EIR for the Water Management Plan, which reports 750,000 visitors, of which 400,000 utilize the Salton Sea for fishing. The Department requests a copy of this latter report to aid us in our analysis of the current use of the Salton Sea and will provide a copy of the CIC Research, Inc. report to the document preparers, if requested. Furthermore, the Department suggests that the CIC Research, Inc. report be referenced in this section of the project document and that the Draft EIR/EIS analyze both sets of information.

S6-21

3.6.4.3 Proposed Project

Lower Colorado River

Based upon the experience of the Department's field staff in operating various types of boats under reduced flow conditions between Parker Dam and Imperial Dam, it is the Department's opinion that boating, hunting, and fishing opportunities will be affected by this Project. Access to backwaters could be compromised for wildlife and boats due to the lowered water surface elevations. Furthermore, launch ramps will be further exposed and at times unusable due to the lowered water surface elevations and reduced duration of peak flows. Loss of hunting and fishing opportunities could be directly attributable to loss of moist soil units, marsh, and backwater habitats for waterfowl hunting and sportfishing. Lowered water surface elevations and reduced duration of peak flows will further expose mainstem sandbars and reduce navigational safety. Therefore, the Department requests the document further analyze the impacts of reduced flows on these recreational activities.

S6-22

Salton Sea

The Department does not agree with the statement on Page 3.6-19, second paragraph, which is attributed to the Salton Sea Restoration Project Draft EIS/EIR. That statement says that "significant impacts to Salton Sea fisheries, especially the orangemouth corvina, began in the year 2000." The Department has no evidence that there have been significant impacts to the Salton Sea sportfishery, especially orangemouth corvina, during the past two years. It is the Department's belief that the evidence presented in the Salton Sea Restoration Project document is based on an unsubstantiated statement made by a researcher who presented no information that correlated the effects of salinity on numbers of fish eggs and larva found in a biological survey at the Salton Sea. Therefore, the Department requests information that substantiates this statement in the

Response to Comment S6-20

The Draft EIR/EIS has been revised to include the 1987 visitor use estimations presented in the CIC Research, Inc. report entitled "The Economic Importance of the Salton Sea Sportfishery" (CIC Research 1989). In addition, it has been determined that the visitor use data presented in the Draft EIR/EIS cannot be substantiated, and therefore these numbers will be removed from the Draft EIR/EIS. The recreation analysis will now be based on the following: (1) Visitor use estimates for the three major recreational facilities at the Salton Sea (Sonny Bono Salton Sea NWR, Salton Sea State Recreation Area, and the Imperial Wildlife Area) and (2) Visitor use estimates provided by the 1989 CIC Research, Inc. report, representing visitor use during 1987. These changes are indicated in this Final EIR/EIS in Section 3.6.

Response to Comment S6-21

The Proposed Action would result in only a small decrease in river flow. Given implementation of the full transfer, the water surface elevation associated with the average annual Parker Dam release would decrease a maximum of 0.4 feet in the reach between Parker and Imperial Dams, over more than a 20 year period. Recreational facilities, such as launch ramps, would not be adversely impacted, nor would boating safety. Impacts to sport fisheries and angler access are expected to be negligible. Impacts to waterfowl hunting are not considered substantial because only small areas would be affected, resulting in subtle habitat changes that would not adversely affect recreational opportunities.

Response to Comment S6-22

The statement referred to by the commenter has been deleted. Refer to Section 3.6 of this Final EIR/EIS.

S6-22 document or, if the statement cannot be supported, then it is requested that the statement be removed.

S6-23 The Department believes that information presented in our letter brings into question the following statement made on Pages 3.6-19, 3.6-25 and 3.6-28 of the document: "The fisheries decline at the Salton Sea under currently existing conditions has already affected the number of available sport fishery visitor use days at the Salton Sea." The Department requests that this statement be removed from the referenced pages of the document if it cannot be supported with substantive information.

S6-24 The Department believes that the following two statements on Page 3.6-20 do not accurately reflect the on-going discussions between the participating agencies and the Department regarding mitigation strategies for the exacerbated loss of the Salton Sea sportfishery. The statements are: 1) "To mitigate this impact, selection of HCP (Salton Sea Portion) Approach 2 would be the only effective measure;" and 2) "With implementation of HCP Approach 2, this impact would be avoided, otherwise, the impact remains significant and unavoidable." Discussions with the participating agencies on Approach 1 have identified a recreational mitigation measure that would have a hatchery producing orangemouth corvina for stocking in the Salton Sea, in order to provide for a put-and-grow sportfishery, for as long as a viable sporfishery could survive. The Department requests that Mitigation Measure R-8 on Page 3.6-20 reflect these discussions and acknowledge that Approach 2 is not the only effective measure and that both approaches reduce the impacts to mitigable and to less than significant.

S6-25 5.1 Cumulative Impact Analysis
Lower Colorado River
The Department believes the project's incremental effect is "cumulatively considerable" as to the LCR. The Proposed Project constitutes one in a series of projects, which involve a 1.574 million acre-feet per year (MAFY) change in point of diversion from Imperial Dam to Parker Dam (1.574 MAFY water transfer).

The Department believes that total future water transfers of up to 1.574 MAFY should be examined as a "probable future project" under CEQA. The Proposed Project and associated water transfers constitute approximately one fifth of the 1.574 MAFY water transfer project. Once all cumulative effects are identified, the impacts to biological resources of the LCR may not be fully mitigated through the implementation of the identified mitigation measures in the Draft EIR/EIS. Not including the transfer of the 1.574 MAFY in the *Cumulative Impact Analysis* may have underestimated the impacts

Response to Comment S6-23

The sentence "The fisheries decline at the Salton Sea under existing conditions has already affected the available sport fishery visitor use days at the Salton Sea" has been deleted from pages 3.6-19, 3.6-25 and 3.6-28. For the revised text, refer to Section 3.6, Recreation, of this Final EIR/EIS.

Response to Comment S6-24

The revised Salton Sea Conservation Strategy would avoid impacts to sport fish attributable to water conservation and transfer. See the Master Response on *Biology—Approach to Salton Sea Habitat Conservation Strategy* in Section 9 in this Final EIR/EIS.

Response to Comment S6-25

The 1.57 MAFY number referenced by CDFG was generated in the early planning stages of the Lower Colorado Multi-Species Conservation Program (MSCP) as a tool to start framing the discussion of the scope of the MSCP process. This number substantially overstates the probably future water transfers along the LCR and is being refined through the MSCP process.

With regard to the comment regarding why the IID/MWD 1988 Agreement was not included in the cumulative impact analysis, refer to the Master Response on *Hydrology—Development of the Baseline* in Section 9 in this Final EIR/EIS.

to biological resources along the lower Colorado River (CEQA Guidelines, Section 15130(b)(3)).

The *IID/MWD 1988 Agreement, IID/MWD/PVID/CVWD 1989 Approval Agreement, and MWD/CVWD 1989 Agreement to Supplement Approval Agreement* and the effects of those projects on the Colorado River should be included in the Cumulative Impact Analysis of the Draft EIR/EIS.

S6-25 The Department recommends that the document incorporate relevant information from the draft LCR MSCP for the following reasons: 1) participating agencies are parties to the planning and development of the LCR MSCP and its associated covered actions; and 2) much of the needed impact analysis and mitigation measures (not limited to federally listed species) are reasonably well developed, and would apply to the Draft EIR/EIS.

S6-26 Salton Sea
The Department requests that the Mexicali Wastewater System Improvements Project be included in the cumulative impacts analysis along with this proposed project and that the impacts from the Mexicali Project with and without the recycling of 55 KAFY of water in Mexico be modeled and analyzed in this document. The conclusion of less than significant would then need to be based on that data.

Comments on Draft HCP

S6-27 Since the release of the Draft EIR/DEIS and draft HCP, the Department and the USFWS have been working with the participating agencies to refine the commitments in the HCP. These discussions have been beneficial in providing more detail in the amount of take and mitigation measures, as well as stronger commitments for the long-term success of the program. The Department appreciates the effort that has been put forward in assuring a viable plan is developed. Many of the following comments reflect the agreement among the participating agencies and the Department on these various subjects. Additional comments are included on issues on which we have not yet had a chance to come to agreement.

S6-28 Since the Draft EIR/EIS was released, the parties have had on-going discussions on a phased approach for mitigating impacts from the Proposed Project on the biological resources of the Salton Sea. The Department recognizes that the USFWS and the participating agencies have developed a phased mitigation plan that includes a fish hatchery and forage ponds for fish-eating birds. The hatchery would be built first, as the Sea becomes too saline for fish to reproduce, and would provide fish to be planted in

Response to Comment S6-26

Please refer to the Master Response on *Other—Cumulative Impacts* in Section 9 of this Final EIR/EIS.

Response to Comment S6-27

Comment noted.

Response to Comment S6-28

The HCP has been revised. Please see the Master Response on *Biology—Approach to Salton Sea Habitat Conservation Strategy* in Section 9 in this Final EIR/EIS. The revised HCP is included as Appendix C in this Final EIR/EIS.

S6-28 the Sea for some years, until the Sea becomes too salty for fish to survive. When the level of salinity is reached at which fish can no longer survive in the Sea, then the foraging ponds for fish-eating birds would be established. This phased plan will provide mitigation for the impacts to the recreational fishery and to fish-eating birds, including fully protected and listed species, for this project only. This phased mitigation plan will buy the Sea some time while Congress and the State determine what actions will be taken to maintain the existing biological and recreational values at the Salton Sea. A long-term solution to restoration of the Sea is being sought by the Salton Sea Restoration Program, a joint effort of the USBR and the Salton Sea Authority.

S6-29 It has been agreed that additional information will be added to each of the sections that discuss the effects of the Proposed Project on covered species. This additional information will include the nature and extent of the impacts that will result in take of each of these species, and the mitigation measures that will fully mitigate the impacts. The information will be of sufficient detail to allow the Department to issue a CESA Incidental Take Permit for the species. Several of the species included in the HCP are designated as fully protected. Take of fully protected species is not allowed except for necessary scientific research. At present, there is proposed State legislation that would allow for take of fully protected species associated with this project. If this legislation is successful in allowing take to occur, then mitigation for impacts to these species will be developed before an NOD is issued for this project. Should legislation be unsuccessful in allowing for take of these species, then measures will be incorporated into the document that avoid take.

1.8.6 California Endangered Species Act

S6-30 This section of the HCP contains several errors regarding CESA. The second paragraph states that take is defined to mean "hunt, pursue, capture, or kill or attempt the same." That definition is missing the term "catch". That section also cites Section 2080 of the Fish and Game Code as prohibiting "direct take" of listed species. Section 2080 prohibits the take of listed species, not merely "direct take."

1.8.6.1 Section 2081

S6-31 This section discusses when the Department may issue incidental take permits. The section states that the Department may issue a permit if it is consistent with "any Department regulations." It should state that the Department may issue a permit if the permit is consistent with any regulations adopted pursuant to Sections 2112 and 2114. In addition, the section states that the "scope of take authorization [under Section 2081] is the same as would be authorized by the USFWS under the Federal ESA." It is unclear what is meant by that statement, since the State and Federal take definitions are different.

Response to Comment S6-29

Regarding information for the incidental take permit, the HCP has been revised to include additional information on the nature and extent of the effects of the Proposed Project on covered species.

Regarding take of fully protected species, the commenter provides additional information about proposed state legislation and the process. No additional mitigation measures are needed. (Also see the response given for Comment S6-15.)

Response to Comment S6-30

The HCP text has been modified to include "catch" in the definition of take and to remove the word "direct" such that it is clear that Section 2080 prohibits take of listed species, not merely "direct take."

Response to Comment S6-31

Section 1.8.6.1 of the HCP has been revised.